UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

DOCTOR'S ASSOCIATES, INC.,	:	
Plaintiff,	:	
	:	
-vs-	:	Civ. No. 3:00cv544(PCD)
	:	
KWAN CHIEN HU,	:	
Defendant.	:	

RULINGS ON MOTION TO CONFIRM ARBITRATION AWARD AND MOTION TO VACATE ARBITRATION AWARD

Pending are Plaintiff's motion to confirm an arbitration award pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C., et seq., and Defendant's motion to vacate the arbitration award pursuant to 9 U.S.C. § 10. For the following reasons, Plaintiff's motion to confirm is **granted** and Defendant's motion to vacate is **denied**.

I. BACKGROUND

The present case originally came before this court on motion to compel arbitration. The motion was granted and the matter proceeded to arbitration.[1] An award issued in favor of Plaintiff granting

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[1] The Franchise Agreement was signed by both parties on January 17, 1995. The arbitration clause of the Franchise Agreement provides as follows:

10. The Company and the Franchisee desire to settle all disputes between them quickly, amicably and in the most cost effective fashion. In order to accomplish these goals, the parties agree to the following provisions which shall apply to resolution of any disputes arising out of or relating to this Agreement and any Franchise Agreements previously signed between the Company and any of the Franchisees who are parties to this Agreement:

* * *

b. The parties hereby agree that the Federal Arbitration Act shall apply to all disputes and claims arising out of or relating to this Agreement, including the breach thereof . . . .

c. Any dispute or claim arising out of or relating to this Agreement not settlement by the parties according to the mediation procedures set out . . . above, shall be settled in accordance with the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association at a hearing to be held at Bridgeport, Connecticut.

* * *

j. If the arbitration clause in Subparagraph 10.c is unenforceable, the parties agree that following mediation, any dispute or claim arising out of or relating to this Agreement shall be adjudicated in Connecticut.

termination of the Franchise Agreement for SUBWAY Store #2131, termination of the sublease and possession of that SUBWAY Store, and discontinuation of Defendant's license to use trade names, trademarks, service marks and other related items indicative of SUBWAY sandwich business.

II. DISCUSSION

Defendant moves to vacate the award, arguing that it (1) was procured by fraud and corruption, (2) issued as a product of manifest disregard of the law, and (3) lacks finality.[2] Plaintiff responds that (1) this Court rejected the fraud claims when it found the arbitration agreement enforceable and compelled defendant to proceed to arbitration, (2) this Court already rejected Defendant's claim of bias when it compelled arbitration, and (3) the arbitrator's award is final because it disposed of Plaintiff's separate, independent claim to terminate the franchise agreement.

A. Standard for Motion to Vacate or Confirm an Arbitration Award

The Federal Arbitration Act reflects a liberal federal policy in favor of arbitration agreements as means of settling disputes. 9 U.S.C.A. § 1, et seq. An award shall be confirmed in the absence of a basis on which to vacate the judgment. 9 U.S.C. § 9. Grounds for vacatur include, inter alia, (1) where the award was procured by corruption, fraud, or undue means, or (2) where there was evident

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[2] Defendant also argues that the arbitrator disregarded the Federal Rules of Evidence and that the arbitrator was biased because he refused to explain his decision. The arbitrator was not bound by the Federal Rules of Evidence. Nitram, Inc. v. Indus. Risk Insurers, 848 F. Supp. 162, 165-66 (M.D. Fla., 1994). In addition, the arbitrator does not have to provide the reasoning behind his decision. Halligan v. Piper Jaffray, Inc., 148 F.3d 197, 204 (2d Cir. 1998).

Defendant further argues in a Supplemental Declaration that his franchisee status was prematurely terminated when a distributor, Vistar, refused to serve him. This claim is meritless as Vistar's refusal occurred after the Arbitration Award had issued and the SUBWAY franchise contract had been terminated. The fact that the award had not yet been confirmed by the court is irrelevant, as "the confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court." Florasynth, Inc. v. Pickholz, 750 F.2d 171, 176 (2d Cir. 1984).

partiality or corruption in the arbitrators. 9 U.S.C. § 10. Judicial discretion to vacate arbitration awards is limited under the FAA, and great deference is given to these awards. Nitram, Inc., 848 F. Supp. at 165.

B. Fraudulent Procurement

Defendant argues that the arbitration award was fraudulently procured because the arbitrator failed to inform him of the "enormous pecuniary benefit to [the] American Arbitration Association resulting from its ongoing relationship with Plaintiff" in the form of mandated arbitrations with AAA in Connecticut. In order to vacate an award because of fraud, the FAA, 9 U.S.C. § 10(a) requires that the party seeking vacatur establish by clear and convincing evidence that the fraud (1) was not discoverable upon the exercise of due diligence prior to the arbitration and (2) is materially related to an issue in the arbitration. A.G. Edwards & Sons, Inc. v. McCollough, 967 F.2d 1401, 1404 (9th Cir. 1992). Failure to satisfy any of the three conditions is fatal to such a claim. A party may also be denied recovery where it has failed to take reasonable steps to discover the fraud. Id.[3]

Defendant cannot persuasively argue that Plaintiff's frequent involvement with the AAA was undiscoverable prior to arbitration as it is expressly named in the Agreement and because he knew or should have known that other SUBWAY franchise agreements were likely to have similar boiler plate clauses. For these reasons, Defendant also cannot claim surprise at the fact that Plaintiff has brought numerous other termination claims before the AAA. The fact that AAA has received a significant amount of money in fees from Plaintiff is not indicative of fraud because all arbitrations with the AAA

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[3] Defendant also argues that plaintiff's frequent use of AAA's services raises the appearance of impropriety. An appearance of impropriety is not sufficient to establish bias under the Arbitration Act. Pac. & Arctic Ry. and Navigation Co. v. United Transp. Union, 952 F.2d 1144, 1148 (9th Cir. 1991); Reed & Martin, Inc. v. Westinghouse Electric Corp., 439 F.2d 1268, 1275 (2d. Cir. 1971).

have a requisite fee, therefore this supposed fraud is not materially related to the arbitration at hand.[4] Assuming arguendo that Plaintiffs did conceal facts about their relationship the AAA, Defendant has not provided a scintilla of evidence, let alone clear and convincing evidence, that such a concealment would amount to fraud. The claim of fraud is therefore without merit.

C. Application of Florida Law to Review of Arbitration Awards

Defendant argues that Florida law concerning the review of franchise arbitration awards should apply. Defendant further argues that the arbitrator's failure to apply Florida law applicable to arbitration proceedings constitutes manifest disregard of the law. This argument is without merit because Defendant expressly agreed that the FAA, not Florida law, would govern arbitration proceedings.[5]

D. Finality of the Award

The district court may vacate awards that purport to be final, but that in fact are not. Michaels v. Mariforum Shipping, S.A., 624 F.2d 411, 414 (2d Cir. 1980). In order for an arbitration award to be "final," it must be intended by the arbitrators to be a complete determination of all claims submitted, and generally, the arbitrators must have decided both the issue of liability and the issue of damages. Id., at 413-14.

Under the terms of the award, the award became final within thirty (30) days unless Defendant pursued his counterclaims.[6] The Interim Arbitration Award issued on February 7, 2003. Defendant's

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4 See generally 9 U.S.C. § 7 ("Witnesses before arbitrators; fees; compelling attendance"); Pac. & Arctic Ry. and Navigation Co. v. United Transp. Union, 952 F.2d 1144 (9th Cir. 1991).

5 See supra note 1.

6 "It shall be incumbent upon the Respondent to notify the Association in writing, with a copy to claimant, whether Respondent elects to continue this arbitration with respect to said counterclaim.

Memorandum in Opposition and Motion to Vacate was filed on March 13, 2003. Defendant provides no evidence that he elected to proceed on his counterclaims within the 30-day period allowed. As such, the award, by its terms, is final.

E. Defendant's Request to Refuse to Decide Instant Matter and to Stay Arbitration

Defendant argues that the Court should refuse to decide this matter until he has had an opportunity to obtain local counsel, to move for pro hac vice status, and until the Court has had an opportunity to (1) conduct an evidentiary hearing, (2) review the transcript of the Arbitration hearing thus far, and (3) review the Post Arbitration Briefs of the parties. "Except where fundamental fairness is violated, arbitration determinations will not be opened up to evidentiary review." Tempo Shain Corp. v. Bertek, 120 F.3d 16, 19 (2d. Cir. 1997). Arbitrators must be given discretion to determine whether additional evidence is necessary or would instead simply prolong the proceedings. Id. In some cases, allowing a review would contradict the primary purpose of arbitration (to save time and money) and would make it merely the first step in a lengthy litigation process. Nat'l Bulk Carriers v. Princess Mgmt Co., Ltd., 597 F.2d 819, 825 (2d. Cir. 1979).

Defendant had the opportunity to present evidence at arbitration and he gives no concrete examples of how fundamental fairness has been violated. He suggests that a review of the arbitration transcript is needed, yet he fails to indicate what is to be found in the transcript or why he has been unable to obtain a copy of the transcript. The present case was reopened five months ago and Defendant has neither obtained local counsel nor has his counsel filed an appearance pro hac vice. As

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> If such election be made, further hearings shall be scheduled by the Association. If Respondent elects not to proceed with respect to those counterclaims or no such election is communicated within said 30-day period, these proceedings will be deemed concluded, the counterclaim will be deemed waived and a final award shall be issued which would constitute the termination and conclusion of this matter."

such, Defendant is not entitled to further delay proceedings through his lack of diligence in pursuing these matters. Absent some showing that his attempts to resolve these purported deficiencies have been frustrated, this court will not sanction further delay.

III. CONCLUSION

Defendant's motion to vacate the arbitration award (Doc. No. 41) is **denied**. Plaintiff's application to confirm the arbitration award (Doc. No. 39) is **granted**. The Clerk shall close the file.

SO ORDERED.

Dated at New Haven, Connecticut, July ___, 2003.

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Peter C. Dorsey
United States District Judge